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10 Attorneys for Plaintiff

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 MERIDIAN TEXTILES, INC., a  
14 California Corporation,

15 Plaintiff,

16 v.

17 WAL-MART STORES, INC., a Delaware  
18 Corporation; FASHION AVENUE  
19 KNITS, INC., a New York Corporation;  
20 and Does 1-10, Inclusive

21 Defendants.

Case No.: CV12-08005 GW (SHx)  
*Honorable George Wu Presiding*

PLAINTIFF'S FIRST AMENDED  
COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT
3. BREACH OF CONTRACT

Jury Trial Demanded

22 Plaintiff MERIDIAN TEXTILES, INC. (hereinafter "MERIDIAN" or  
23 "Plaintiff"), by and through its undersigned attorneys, hereby prays to this honorable  
24 Court for relief based on the following:

**INTRODUCTION**

25 Plaintiff creates and obtains rights to unique two-dimensional graphic artworks  
26 for use on textiles, which textiles are transacted primarily in the fashion industry.  
27 Plaintiff owns these designs in exclusivity and makes sales of products bearing these  
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CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY: \_\_\_\_\_

1 designs for profit. Plaintiff's business is predicated on its ownership of these designs  
2 and it spends a considerable amount of time and resources creating and obtaining top-  
3 quality, marketable and aesthetically-appealing designs. Customers of Plaintiff,  
4 including possibly DOE defendants named herein, take design samples with the  
5 understanding and agreement that they will only utilize Plaintiff to reproduce said  
6 designs should they wish to do so, and will not seek to make minor changes to  
7 Plaintiff's proprietary work to reproduce the same elsewhere, yet use those designs in  
8 furtherance of their business in violation of both their contractual agreement with  
9 Plaintiff and Plaintiff copyrights.

### 10 11 **JURISDICTION AND VENUE**

12 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101  
13 *et seq.*

14 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and  
15 1338 (a) and (b).

16 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and  
17 1400(a) in that this is the judicial district in which a substantial part of the acts and  
18 omissions giving rise to the claims occurred.

### 19 20 **PARTIES**

21 4. Plaintiff MERIDIAN TEXTILES, INC. is a corporation organized and  
22 existing under the laws of the State of California with its principal place of business  
23 located at

24 5. Plaintiff is informed and believes and thereon alleges that Defendant WAL-  
25 MART STORES, INC. ("WAL-MART") is a corporation organized and existing  
26 under the laws of the State of Delaware, with its principal place of business at 818  
27 West Seventh Street, Los Angeles, California, 90017.

1           6. Plaintiff is informed and believes and thereon alleges that Defendant  
2 FASHION AVENUE KNITS, INC. ("FASHION AVENUE") is a corporation  
3 organized and existing under the laws of the State of New York with its principal  
4 place of business at 225 West 37<sup>th</sup> Street, 8<sup>th</sup> Floor, New York, New York, 10018  
5 and doing business in and with California.

6           7. Plaintiff is informed and believes and thereon alleges that some of  
7 Defendants DOES 1 through 5, inclusive, are manufacturers and/or vendors of  
8 garments to Defendant, which DOE Defendants have manufactured and/or supplied  
9 and are manufacturing and/or supplying fabrics and other product printed with  
10 Plaintiff's copyrighted designs (as hereinafter defined) without Plaintiff's knowledge  
11 or consent or have contributed to said infringement. The true names, whether  
12 corporate, individual or otherwise of Defendants DOES 1-5, inclusive, are presently  
13 unknown to Plaintiff, which therefore sues said Defendants by such fictitious names  
14 and will seek leave to amend this complaint to show their true names and capacities  
15 when same have been ascertained.

16           8. Defendants DOES 6 through 10, inclusive, are other parties not yet  
17 identified who have infringed Plaintiff's copyrights, have contributed to the  
18 infringement of Plaintiff's copyrights, or have engaged in one or more of the  
19 wrongful practices alleged herein. The true names, whether corporate, individual or  
20 otherwise, of Defendants 6 through 10, inclusive, are presently unknown to Plaintiff,  
21 which therefore sues said Defendants by such fictitious names, and will seek leave to  
22 amend this Complaint to show their true names and capacities when same have been  
23 ascertained.

24           9. Plaintiff is informed and believes and thereon alleges that at all times  
25 relevant hereto each of the Defendants was the agent, affiliate, officer, director,  
26 manager, principal, alter-ego, and/or employee of the remaining Defendants and was  
27 at all times acting within the scope of such agency, affiliation, alter-ego relationship  
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1 and/or employment; and actively participated in or subsequently ratified and  
2 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of  
3 all the facts and circumstances, including, but not limited to, full knowledge of each  
4 and every violation of Plaintiff's rights and the damages to Plaintiff proximately  
5 caused thereby.

6 **CLAIMS RELATED TO DESIGN L2038**

7 10. Prior to the conduct complained of herein, Plaintiff composed an original  
8 two-dimensional artwork for purposes of textile printing. It allocated this design  
9 Plaintiff's Internal Design Number L2038 ("Subject Design A"). This artwork was a  
10 creation of Plaintiff's design team, and is, and at all relevant times was, owned in  
11 exclusively by Plaintiff. At all relevant times Plaintiff held a valid copyright in the  
12 Subject Design A.

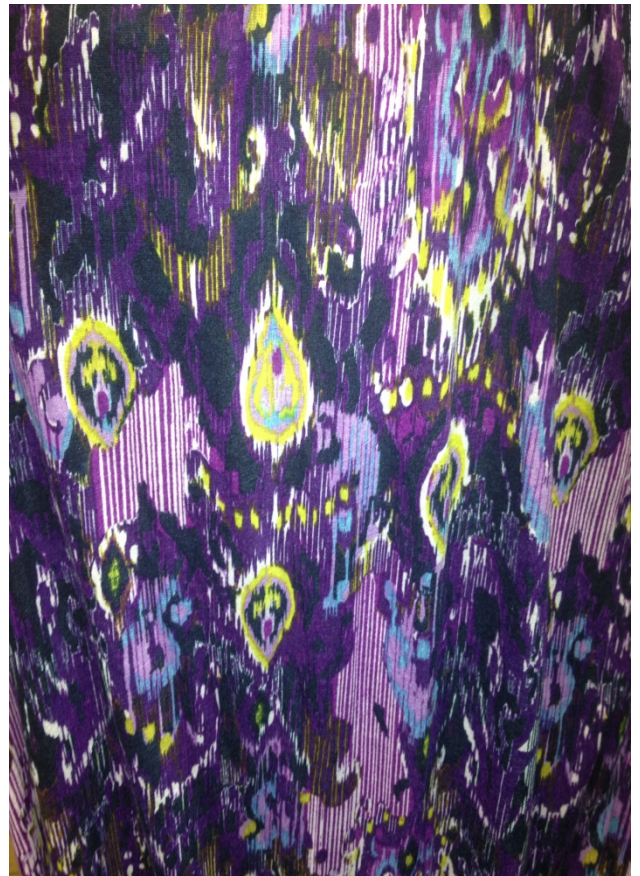
13 11. Plaintiff applied for and received a United States Copyright Registration  
14 for the Subject Design A.

15 12. Prior to the acts complained of herein, Plaintiff sampled and sold fabric  
16 bearing Subject Design A to numerous parties in the fashion and apparel industries.

17 13. Following this distribution of product bearing Subject Design A, Plaintiff's  
18 investigation revealed that garments with a fabric design identical or substantially  
19 similar to the Subject Design A were being sold by WAL-MART and created,  
20 manufactured, caused to be manufactured, imported, and/or distributed by  
21 FASHION AVENUE. These garments were sold under ITEM NO. 78905031493,  
22 RN NO. 73352, and STYLE NO. 11863.

23 14. A comparison of Subject Design A (left) and Accused Product A (right) are  
24 set forth below; it is apparent that the elements, composition, colors, arrangement,  
25 layout, and appearance of the designs are substantially similar.





### **CLAIMS RELATED TO DESIGN L2468**

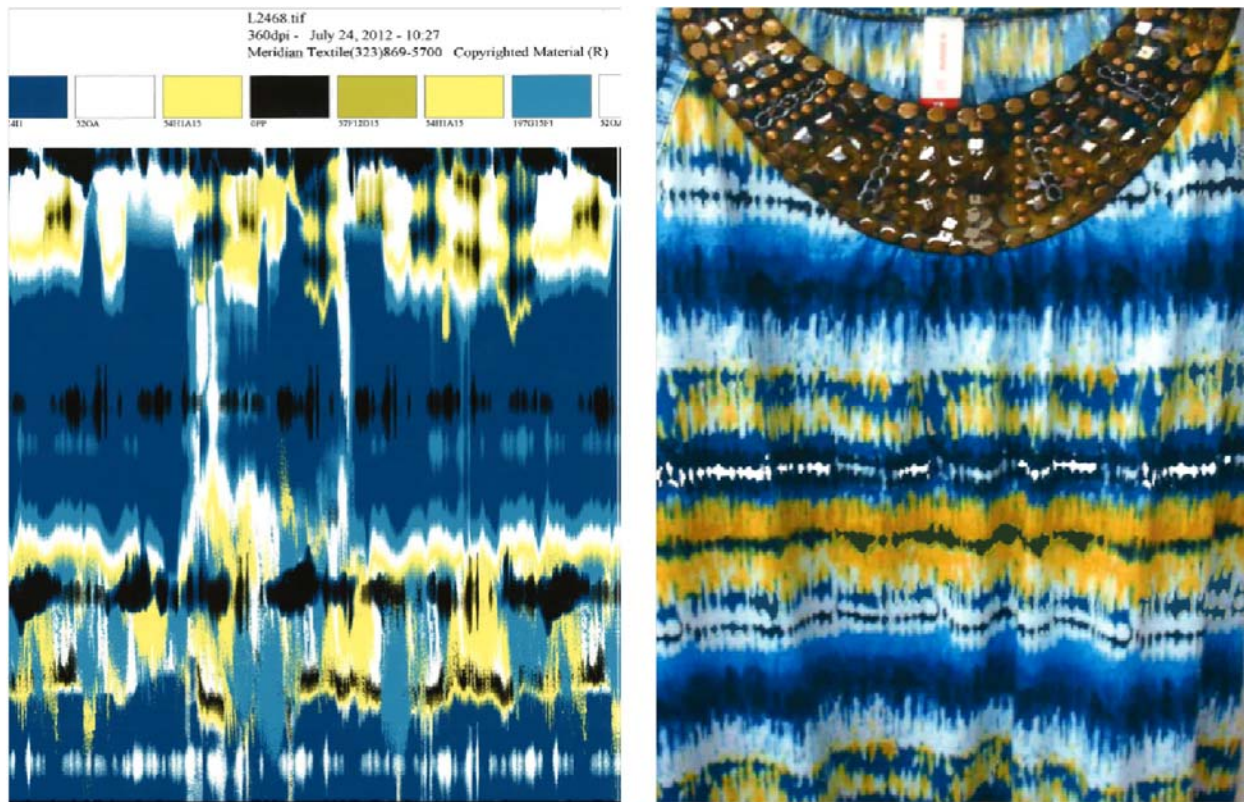
15.. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing. It allocated this design Plaintiff's Internal Design Number L2468 ("Subject Design B"). This artwork was a creation of Plaintiff's design team, and is, and at all relevant times was, owned in exclusively by Plaintiff. At all relevant times Plaintiff held a valid copyright in the Subject Design B.

16. Plaintiff applied for and received a United States Copyright Registration for the Subject Design B.

17. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing Subject Design B to numerous parties in the fashion and apparel industries.

18. Following this distribution of product bearing Subject Design B, Plaintiff's investigation revealed that garments with a fabric design identical or substantially similar to the Subject Design B were being sold by WAL-MART and created, manufactured, caused to be manufactured, imported, and/or distributed by FASHION AVENUE. These garments were sold under ITEM NO. 078905031485, RN NO. 73352, and STYLE NO. 11863.

19. A comparison of Subject Design B (left) and Accused Product B (right) are set forth below; it is apparent that the elements, composition, colors, arrangement, layout, and appearance of the designs are substantially similar.



**CLAIMS RELATED TO DESIGN J1455**

20. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing. It allocated this design Plaintiff's Internal Design Number J1455 ("Subject Design C"). This artwork was a creation of Plaintiff's design team, and is, and at all relevant times was, owned in exclusively by Plaintiff. At all relevant times Plaintiff held a valid copyright in the Subject Design C.

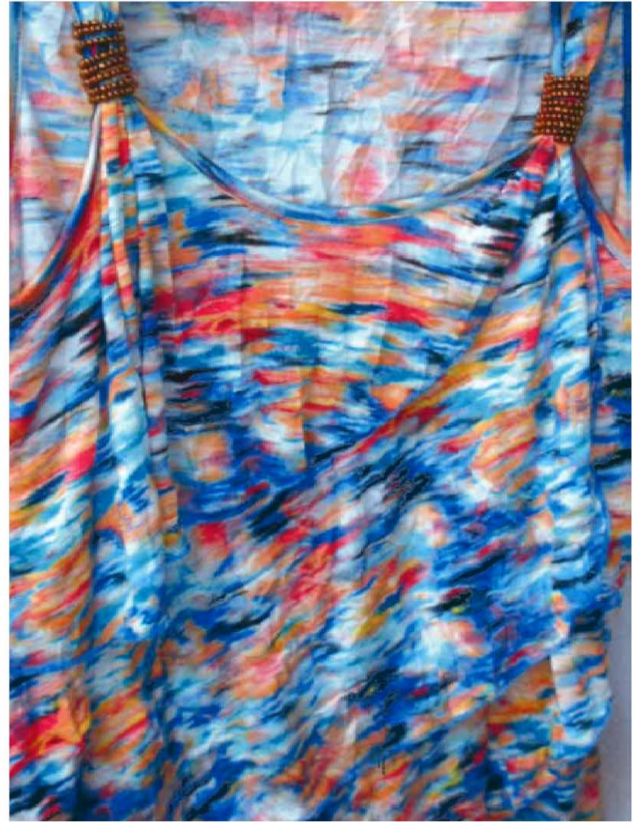
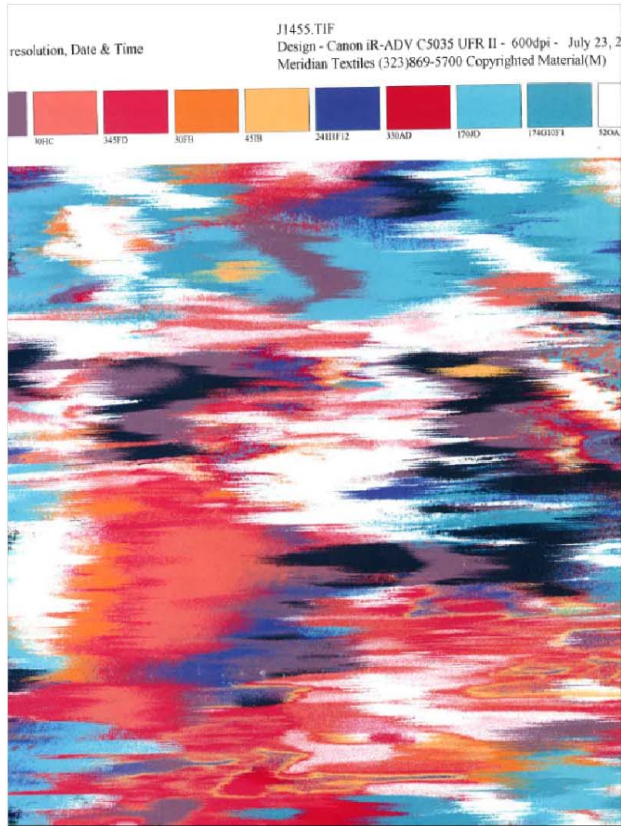
21. Plaintiff applied for and received a United States Copyright Registration for the Subject Design C.

22. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing Subject Design C to numerous parties in the fashion and apparel industries.

23. Following this distribution of product bearing Subject Design C, Plaintiff's investigation revealed that garments with a fabric design identical or substantially similar to the Subject Design C were being sold by WAL-MART and created, manufactured, caused to be manufactured, imported, and/or distributed by FASHION AVENUE. These garments were sold under ITEM NO. 078905031268K, RN NO. 73352, and STYLE NO. 11891.

24. A comparison of Subject Design C (left) and Accused Product C (right) are set forth below; it is apparent that the elements, composition, colors, arrangement, layout, and appearance of the designs are substantially similar.





### **CLAIMS RELATED TO DESIGN L2303**

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25. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing. It allocated this design Plaintiff's Internal Design No. L2303 ("Subject Design D"). This artwork was a creation of Plaintiff's design team, and is, and at all relevant times was, owned in exclusively by Plaintiff. At all relevant times Plaintiff held a valid copyright in the Subject Design D.

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26. Plaintiff applied for and received a United States Copyright Registration for the Subject Design D.

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27. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing Subject Design D to numerous parties in the fashion and apparel industries.



28. Following this distribution of product bearing Subject Design D, Plaintiff's investigation revealed that garments with a fabric design identical or substantially similar to the Subject Design C were being sold by WAL-MART and created, manufactured, caused to be manufactured, imported, and/or distributed by FASHION AVENUE. These garments were sold under WAL-MART SKU 078905033780, bearing RN NO. 73352, and STYLE NO. fg12530.

29. A comparison of Subject Design D (left) and Accused Product D (right) are set forth below; it is apparent that the elements, composition, colors, arrangement, layout, and appearance of the designs are substantially similar.



### **FIRST CLAIM FOR RELIEF**

(For Copyright Infringement - Against All Defendants)

30. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

31. Subject Designs A, B, C, and D shall collectively be referred to herein as “Subject Designs.”

32. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to the Subject Designs, including, without limitation, through (a) access to Plaintiff's showroom and/or design library; (b) access to illegally distributed copies of the Subject Designs by third-party vendors and/or DOE Defendants, including without limitation international and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) access to garments being sold in the marketplace bearing fabric lawfully printed through Plaintiff.

33. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures garments and/or is a garment vendor. Plaintiff is further informed and believes and thereon alleges that said Defendant(s) has an ongoing business relationship with Defendant retailer, and each of them, and supplied garments to said retailer, which garments infringed the Subject Designs in that said garments were composed of fabric which featured an unauthorized print design that was identical or substantially similar to the Subject Designs.

34. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyright by creating, making and/or developing directly infringing and/or derivative works from the Subject Designs and by producing, distributing and/or selling garments which infringe the Subject Designs through a nationwide network of retail stores and on-line outlets.

35. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its business in an amount to be established at trial.

36. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

1 37. Due to Defendants' acts of copyright infringement as alleged herein,  
2 Defendants, and each of them, have obtained direct and indirect profits they would  
3 not otherwise have realized but for their infringement of the Subject Design. As  
4 such, Plaintiff is entitled to disgorgement of Defendant's profits directly and  
5 indirectly attributable to Defendant's infringement of the Subject Designs in an  
6 amount to be established at trial.

7 38. Plaintiff is informed and believes, and thereon alleges, that Defendants  
8 committed the acts complained of herein knowingly and with reckless disregard of  
9 Plaintiff's copyrights such that their actions constitute willful infringement.  
10 Specifically, Defendant FASHION AVENUE sampled each of the Subject Designs  
11 from Plaintiff knowing that they were Plaintiff's proprietary artwork, but rather than  
12 having those designs printed through Plaintiff, took those designs to have them  
13 printed elsewhere and/or created unauthorized derivative designs from the Subject  
14 Designs.

15 **SECOND CLAIM FOR RELIEF**

16 (For Vicarious and/or Contributory Copyright Infringement - Against All  
17 Defendants)

18 39. Plaintiff repeats, realleges and incorporates herein by reference as though  
19 fully set forth the allegations contained in the preceding paragraphs of this  
20 Complaint.

21 40. Plaintiff is informed and believes and thereon alleges that Defendants  
22 knowingly induced, participated in, aided and abetted in and profited from the illegal  
23 reproduction and/or subsequent sales of product featuring the Subject Designs as  
24 alleged hereinabove.

25 41. Plaintiff is informed and believes and thereon alleges that Defendants, and  
26 each of them, are vicariously liable for the infringement alleged herein because they  
27

1 had the right and ability to supervise the infringing conduct and because they had a  
2 direct financial interest in the infringing conduct.

3 42. By reason of the Defendants', and each of their, acts of contributory and  
4 vicarious infringement as alleged above, Plaintiff has suffered and will continue to  
5 suffer substantial damages to its business in an amount to be established at trial, as  
6 well as additional general and special damages in an amount to be established at  
7 trial.

8 43. Due to Defendants' acts of copyright infringement as alleged herein,  
9 Defendants, and each of them, have obtained direct and indirect profits they would  
10 not otherwise have realized but for their infringement of the Subject Design. As  
11 such, Plaintiff is entitled to disgorgement of Defendants' profits directly and  
12 indirectly attributable to Defendants' infringement of the Subject Design, in an  
13 amount to be established at trial.

### 14 **THIRD CLAIM FOR RELIEF**

15 (For Breach OF Contract - Against Defendant Fashion Avenue)

16 44. Plaintiff repeats, realleges and incorporates herein by reference as though  
17 fully set forth the allegations contained in paragraphs 1-43 of this Complaint.

18 45. Prior to the infringement alleged herein, FASHION AVENUE took access  
19 to, and possession of, samples of the Subject Designs directly from Plaintiff.  
20 FASHION AVENUE received these samples only after expressly agreeing to  
21 Plaintiff's contractual restriction that FASHION AVENUE would seek Plaintiff's  
22 authorization before creating any product bearing the Subject Designs, and, if it was  
23 to create product bearing the Subject Designs, it would only do so only through  
24 Plaintiff.

25 46. FASHION AVENUE, when receiving Plaintiff's samples of the Subject  
26 Designs, expressly and impliedly promised to seek authorization from Plaintiff  
27 before using the Subject Designs in any manner, and promised to pay Plaintiff for  
28



1 the use of the Subject Designs if it chose to use them in any way. This promise to  
2 pay for use of the Subject Designs was discrete from FASHION AVENUE's  
3 promise not to infringe the Subject Designs.

4 47. Plaintiff provided the Subject Design to FASHION AVENUE while  
5 negotiating a possible purchase by FASHION AVENUE of Plaintiff's products.  
6 When providing the Subject Designs to FASHION AVENUE, Plaintiff clearly  
7 indicated that FASHION AVENUE was receiving samples of the Subject Designs  
8 with the condition that FASHION AVENUE was to tender to Plaintiff the reasonable  
9 value of use of any of the Subject Designs if FASHION AVENUE was to make use  
10 of the Subject Designs.

11 48. Plaintiff and FASHION AVENUE engaged in the transactions set forth  
12 herein, wherein Plaintiff submitted the Subject Designs to FASHION AVENUE with  
13 the understanding and expectation, clearly understood by said parties, that Plaintiff  
14 would first authorize, and then be paid for, any use of any of the Subject Designs by  
15 FASHION AVENUE.

16 49. Plaintiff would not have disclosed the Subject Designs to FASHION  
17 AVENUE without FASHION AVENUE's agreement to the stipulations and  
18 conditions regarding Plaintiff's authorization of, and payment receipt for, any use of  
19 the Subject Design by FASHION AVENUE.

20 50. Despite this knowledge and understanding, FASHION AVENUE created or  
21 had created, product bearing the Subject Designs, or a derivation thereof, and  
22 published, advertised, sold, and promoted such products. In doing so, FASHION  
23 AVENUE failed to seek Plaintiff's authorization before using the Subject Design,  
24 and failed to pay Plaintiff for use of the Subject Designs, in violation of the parties'  
25 express and implied agreements as to same.

26 Due to the above, Plaintiff has suffered general and special damages, in an  
27 amount to be established at trial.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment as follows:

**Against All Defendants**

1. **With Respect to Each Claim for Relief**

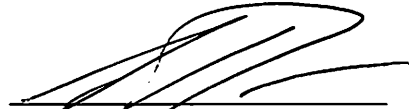
- a. That Defendants, their agents and employees be enjoined from infringing Plaintiff's copyrights in any manner, specifically those for the Subject Designs;
- b. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;
- c. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. § 101 et seq.;
- d. That Plaintiff be awarded pre-judgment interest as allowed by law;
- e. That Plaintiff be awarded the costs of this action; and
- f. That Plaintiff be awarded such further legal and equitable relief as the g. Court deems proper.

A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND  
CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.

DONIGER / BURROUGHS APC

Dated: September 26, 2012

By:

  
Stephen M. Doniger, Esq.  
Attorneys for Plaintiff  
MERIDIAN TEXTILES, INC.

Stephen M. Doniger, Esq. (SBN 179314)  
 Scott A. Burroughs, Esq. (SBN 235718)  
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 300 Corporate Pointe, Suite 355  
 Culver City, California 90230  
 Telephone: (310) 590-1820

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

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v.

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DEFENDANT(S).

CASE NUMBER

CV12-08005 GW (SHx)

**SUMMONS**

TO: DEFENDANT(S): \_\_\_\_\_

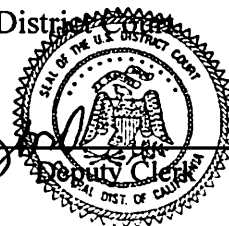
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☐ complaint ☒ first amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Stephen M. Doniger, Esq., whose address is DONIGER / BURROUGHS APC 300 Corporate Pointe, Ste. 355 Culver City, CA 90230. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 9/27/2012

By: [Signature]



(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].